

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PHILANDER PHILIPPEAUX,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

USDC-SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC#:
DATE FILED: 6/24/2020

18-CV-5974 (RA)

ORDER

RONNIE ABRAMS, United States District Judge:

Petitioner Philander Philippeaux, proceeding *pro se*, moved pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence in connection with his September 2015 conviction. On March 9, 2020, the Court adopted Magistrate Judge Netburn's Report and Recommendation in its entirety, and denied both the § 2255 petition and Petitioner's collateral motions. *See* Dkt. 38. Petitioner subsequently filed motions to alter or amend the Court's Order, which the Court denied several times. *See* Dkts. 40, 42, 44. On April 23, 2020, Petitioner filed a Notice of Appeal to the Court of Appeals for the Second Circuit, Dkt. 45, and on April 29, 2020, he filed an Amended Notice of Appeal, Dkt. 48. Pursuant to the Amended Notice of Appeal, Petitioner seeks to appeal the Court's March 9th Order, Dkt. 38, as well as its subsequent orders regarding Petitioner's motions to alter or amend the judgment, Dkts. 40, 42, 44.

It has come to the Court's attention, however, that in its prior orders, it inadvertently neglected to rule on whether a certificate of appealability shall issue. *See* 28 U.S.C. § 2253. Given that a district court may clarify its prior orders "in aid of the appeal," *United States v. Viola*, 555 F. App'x 57, 60 (2d Cir. 2014), it shall do so now. Because Petitioner makes no substantial showing of a denial of a constitutional right, a certificate of appealability shall not issue as to any of the orders at Dkts. 38, 40, 42, and 44. *See* 28 U.S.C. § 2253(c)(2); *Thaler v. United States*, 706

F. Supp. 2d 361, 378-79 (S.D.N.Y. 2009) (a certificate of appealability “is required to appeal from a final order in a habeas corpus proceeding,” as well as from “Fed R. Civ. P. 60(b) or 59(e) motions where the decision the court is being asked to amend or reconsider is a decision on the merits”) (citations omitted).

SO ORDERED.

Dated: June 24, 2020
New York, New York



Ronnie Abrams
United States District Judge